97-84008-4

Curtis, William John

The appointment of judges and their tenure of office

[New York?]

[1915?]

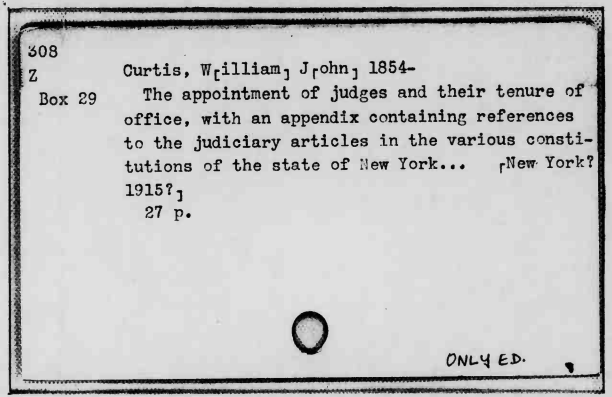
97-84008-4

MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD


308
Z
Box 29
Curtis, W[illiam] J[ohn] 1854-
The appointment of judges and their tenure of office, with an appendix containing references to the judiciary articles in the various constitutions of the state of New York... [New York? 1915?]
27 p.
ONLY ED.

RESTRICTIONS ON USE: *Reproductions may not be made without permission from Columbia University Libraries.*

TECHNICAL MICROFORM DATA

FILM SIZE: 35 MM REDUCTION RATIO: 11:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 1/17/97 INITIALS: AR

TRACKING # : MSH 20543

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

BIBLIOGRAPHIC IRREGULARITIES

MAIN ENTRY: Curtis, William John

The appointment of judges and their tenure of office

Bibliographic Irregularities in the Original Document:

List all volumes and pages affected; include name of institution if filming borrowed text.

_____Page(s) missing/not available:_____

_____Volume(s) missing/not available:_____

_____Illegible and/or damaged page(s):_____

_____

_____Page(s) or volume(s) misnumbered:_____

_____Bound out of sequence:_____

_____Page(s) or volume(s) filmed from copy borrowed from:_____

_____

X Other: pagination begins with page 3

_____

_____Inserted material:_____

TRACKING#: MSH20543

Gift
Hon. Charles
May, 1915

308
Z
Box 29

The Appointment of Judges and Their Tenure of Office

By
W. J. CURTIS

With an Appendix containing references to the Judiciary Articles in the various Constitutions of the State of New York, and in the Constitutions of the States of Massachusetts, New Hampshire, Connecticut, Maine, Delaware, and New Jersey.

1915 ?

The Appointment of Judges and Their Tenure of Office

By

W. J. CURTIS

With an Appendix containing references to the Judiciary Articles in the various Constitutions of the State of New York, and in the Constitutions of the States of Massachusetts, New Hampshire, Connecticut, Maine, Delaware, and New Jersey.

17 Feb. 1916

The Appointment of Judges and Their Tenure of Office.

The members of the approaching Constitutional Convention will be called upon to consider many questions of great importance, but none more fundamental or far-reaching than the Article on the Judiciary.

For some years past there have been many evidences of discontent on the part of the public concerning the administration of justice, and frequent criticisms have been heard from members of the Bar. Perhaps this general attitude of discontent and criticism is the reflection of political and social unrest; but the candid investigator will be compelled to admit that in certain sections of the country and possibly in our own State there is ample justification for this critical spirit, owing to delays, technicalities, imperfections of procedure, a depreciation in the standard of judicial nomination and general defects in the administration of justice.

It is not necessary further to analyze this unrest. The members of the Bar would, however, be lacking in intellectual integrity if they did not recognize the existence of some justification for it.

Many of us are unalterably opposed to the doctrine of Judicial Recall. In principle it seems to us to be utterly indefensible, and yet practically are we not bound to recognize the fact that judges are at times selected, under constitutional forms, who are not the real choice of the people but who are nominees of irresponsible politicians and possibly as a result of corporate influence? That this is or has been true in certain sections of the country must be admitted, and if true, is it any wonder that there is a disposition on the part of the people to find some means of neutralizing this improper method of choosing judges, and of registering their protest against the continuance in office of judges, the method of whose selection is an affront to the people and the Bar?

It is significant that in those States where judges are appointed by responsible executives or judges, especially in the New England States and New Jersey, there is little or no support for the theory of the Recall of Judges.

In the framing of the Article on the Judiciary it will be incumbent upon the members of the approaching Constitutional Convention to consider many subjects, all of which are important; but it is my purpose in this paper to invite particular attention only to the question of the manner of the selection of judges and their tenure of office.

There can be no difference of opinion among those who have the interests of the people as well as the Bar at heart as to the proper qualifications of judges. They should be men of the highest character, deeply learned in the law, with such experience as practicing lawyers as thoroughly to qualify them for the best service on the Bench. They should also be lawyers having the confidence and respect of the Bar, and entitled by character, experience and learning to aspire to judicial office. There should be no question about their judicial independence and freedom from political influences and control.

Let me adopt the language of Rufus Choate in his celebrated speech, delivered before the Massachusetts Constitutional Convention in 1853.

> "And, finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed such. I should be glad so far to indulge an old fashioned and cherished professional sentiment as to say, that I would have something of venerable and illustrious attach to his character and function, in the judgment and feelings of the commonwealth. But if this should be thought a little above, or behind the time, I do not fear that I subject myself to the ridicule of any one, when I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; not a man perching for a winter and summer in our court-houses, and then gone forever; but one to whose benevolent face, and bland and dignified manners, and firm administration of the whole learning of the law, we become accustomed; whom our eyes anxiously, not in vain, explore when we enter the temple of justice; towards whom our attachment and trust grow even with the growth of his own eminent reputation."*

*Life and Writings of Rufus Choate, by Samuel G. Brown, Vol. II, p. 287.

No one will take exception to this standard of judicial character and fitness. The question with which we are now confronted is: how can we make certain of securing such judges in the future? The answer to this of necessity depends upon the method of selection and the tenure of office.

Under our present Constitution the right to choose judicial candidates is vested in the electorate. This, as is well known, was a change adopted in the Constitution of 1846. Prior to that time judges were appointed either by the Governor and Council or by the Governor and confirmed by the Senate. The change from a system of appointment to one of election by the people was doubtless due to the political wave that swept over the country at that time. The system has, however, been perpetuated in subsequent constitutional revisions.

If it be justified by results and is in principle sound, it should, of course, be perpetuated; but it is with regret that we must concede that the system has not worked satisfactorily, and that there is at the present time an almost unanimous feeling among the enlightened members of the Bar that the system of election has proved a substantial failure and should be changed to one of appointment by some responsible appointing power, and that election by the people is essentially unsound in principle. It must be admitted that the defect of the present system has become increasingly emphasized during the past few years.

It is unprofitable to attempt to make comparisons in justification of this general consensus of opinion. No one will question the fact that the present system has resulted in producing *some* judges of the highest character and of the greatest ability. It is with pride that we can point to recent illustrations of distinguished and honorable judicial service. It will be conceded that any method of selecting judges, however objectionable or defective, would produce *some* judges of the highest character and ability. The real, underlying question is: is an elective system the best, and will the ablest judges be more likely to be obtained by it than by appointment?

From the time of Hamilton to the present day the ablest lawyers and most profound thinkers have agreed that by the system of appointment alone can we most certainly and uniformly secure judges

of the greatest ability, unquestioned integrity, and absolute independence. The literature of the law is convincing evidence of this proposition. To any one doubting the correctness of this statement reference need only be made to the article in the Federalist by Hamilton;[1] to Chancellor Kent's[2] lucid and convincing discussion in his Commentaries; to Judge Story's[3] masterly work on the Constitution; to the argument of Rufus Choate[4] referred to above; to the address of ex-President Taft[5] delivered before the American Bar Association in 1913; to the address of Mr. Albert M. Kales[6] delivered at the meeting of the Minnesota State Bar Association in 1914, and to many other able addresses too numerous to mention. Those specially referred to will furnish the student of this question with unanswerable and conclusive reasons in support of our contention.

But we need not alone rely upon reason and argument to support our position, for it is incontestably established as the result of experience.

The character and ability of the Federal Judiciary alone is absolutely conclusive of the question. The unusually high qualifications of Federal Judges is well known and universally conceded. There have been so few exceptions since the adoption of the Constitution that they but prove the rule.

The experience of England is especially convincing as to the benefits resulting from an appointed judiciary.

Among our own states are a number whose experience is impressive and convincing, such as Maine, New Hampshire, Massachusetts, Connecticut, New Jersey, and Delaware; while in many states where the elective system prevails the judiciary has been notoriously weak.

The question may be asked: have we no faith in the people; do

[1]The Federalist, Article 78.
[2]Kent's Commentaries, 14th Edition, Vol. 1, Lecture 14 on Judicial Department, *p. 291 et seq.
[3]Story on Constitutions, Vol. II, Sec. 1599 et seq.
[4]Life and Writings of Rufus Choate, Vol. II. Speech on Judicial Tenure.
[5]Taft's Speech on Judiciary, Report of American Bar Assn. 1913.
[6]American Judicature Society, Bulletin No. 6.

we distrust their judgment and action? No, we do not distrust the people in those spheres of action involving the discussion and determination of political policies or principles; but it is not the function of an electorate nor are they qualified to select candidates for judicial positions. To determine the fitness and qualifications of such candidates necessarily involves familiarity with the character, knowledge, training, experience, and temperament of the individual, which no body of voters can be presumed to possess. No one would think of selecting by popular vote a technical expert of any kind for any position, and that is what a judge in reality is. The selection of an engineer to build a bridge is not a matter upon which the electorate could pass, because they cannot be sufficiently advised of or acquainted with the qualifications of candidates for such a position; nor would any one think of referring the selection of a physician to popular vote. Even lawyers in their practice would scout the idea that referees could better be chosen by popular vote than by themselves. Qualifications for judicial positions are not of a popular character, and those who are best equipped for the office would not be readily recognized or appreciated by the great mass of voters. If such choice were actually left to the people as a whole it would probably fall upon someone having popular rather than intellectual and judicial qualities.

The discussion, however, has proceeded upon the theory that the people of this State do choose and have chosen their judicial candidates in accordance with its Constitution. This fiction must at once be brushed aside. While the Constitution does in terms grant to the people the right to elect their judges, it has in practice been totally disregarded and absolutely nullified. Elections of judges are the purest forms to register the choice of the political leader. They are held only to constitute a purely formal compliance with the letter, not the substance or spirit, of the Constitution. The system that now prevails in this State is in fact one of *appointment,* not by an official chosen by the people and responsible to them, but by political leaders and party managers. This is a notorious fact, known of all men. It has been said that this is not true of the country districts, but those who are well-informed will confirm the statement that in its essence it is true that judges in the country districts are in the first instance

selected by the political leaders. Perhaps the method adopted is not so direct as to make it possible in every case to place the responsibility upon one man, but there is a parcelling out of such appointments among the politicians so that in effect the appointment is by the political leaders.

To our disgrace and humiliation this practice has increased to such an extent that it is rumored that this power of appointment has extended even to our highest court. It is not to the credit of our Bar that it has ignominiously submitted to this condition. At times some of its members have participated in this wrong. It is well known that in advance of nominations attempts have been made by members of the Bar, or their committees, to influence these political leaders in order to prevent improper appointments or to secure the selection of candidates they deemed most worthy, sometimes with success, but more often with failure. The motive animating such conduct is not to be criticised, but isn't it humiliating to think that our honored profession should be compelled to plead with political bosses to appoint judges of character and ability, when the Constitution says they shall be chosen by the people? What a mockery the whole thing is!

We must not deceive ourselves with the belief that the method which actually prevails in this State has any relation whatever to the elective system of the Constitution. Candidates are *appointed* by political leaders, not because of their judicial qualifications, but largely because of their political activities, influence, or associations. Indeed, it may be said without undue harshness that few if any of the so-called political leaders have the moral or intellectual equipment even to recognize a good judge. Is it any wonder that as a result of such a system appointments have been made which have not fulfilled the highest professional ideals or that the independence and character of some of the appointees have been questioned; or that as a result judges have been appointed who possessed few, if any, of the ideal qualifications above stated?

The method prevailing is not only defective in its results but it is degrading to the Bar itself. One of the most honorable ambitions of a lawyer is the desire for judicial preferment. This, under proper

conditions, is a stimulus to study, devotion, industry, and loyalty to the highest professional ideals; but under present conditions the path to judicial preference lies not in professional success or devotion to its ideals, but through political associations or activities. How long will it be before such demoralizing tendencies will destroy the character of the Bar itself?

Let us be candid in dealing with this question. If the present system is to be preferred, why not write it into the Constitution and bestow upon these political leaders the power of appointment? Let us recognize the existing facts and not accept shams and subterfuge, but frankly avow our adoption of this improper and sometimes corrupt method.

If appointment to judicial office is justified, as we believe it to be in principle and demonstrated by experience, let it be made by a responsible executive, judge or court who will feel some pride in the performance of such important duties. We should no longer submit to a system which is not recognized by the Constitution, but is in defiance of it, and which in its methods and results is injurious and demoralizing in its tendencies and subversive of the independence of the judiciary, as well as utterly debasing to the members of the Bar who acquiesce in or submit to it.

We are not criticising the exercise of this power by the politicians themselves. They are human, and gladly avail of the indifference and supineness of the profession and the neglect of the people. It is a natural failing to avail of the opportunity thus presented; but the members of the Bar must not allow themselves to accept or consider the exercise of this power by politicians or bosses as a fulfilment of the Constitution in its present form.

Much has been said about the exalted position which lawyers as a profession have held in the history of our government. True it is that they have been the most potent force in preserving and protecting the liberties of the people and in the administration of the affairs of government. At this time a very high obligation rests upon the members of our profession to fulfil its best traditions by attempting to secure the adoption of a Judiciary Article which shall place the

appointing power in the hands of an executive, court, or judge responsible to the people.

We are not insistent upon any precise method of appointment, although such power is usually, and we believe properly, vested in the Governor. It may be that it could, with entire propriety, be vested in the Governor so far as the Court of Appeals is concerned, subject to confirmation by the Senate; and in the Chief Justice of the Court of Appeals, with the approval of his associates, so far as all other judicial appointments are concerned. Any method of appointment by some responsible official, judge or court is to be preferred to our present system. We may with confidence rely upon the verdict of history that the exercise of such power will result in greater responsibility, and consequently better judges.

But what shall be the tenure of office? Reason and experience support the view that the best results can be secured in the selection of judges by giving them a life tenure. The reasons are manifest. The dignity and honor of such an office are immediately apparent. Absolute independence of action is more readily secured. A judge appointed for life is relieved from anxiety respecting his future; his life work is determined. His whole ambition is to administer his office in such a manner as to reflect credit upon his profession and honor upon himself. Political influences have no terrors for him. He is also thereby removed from the temptation of judicial favoritism to those upon whom he may depend for re-election or re-appointment. Every consideration points to the advantages of a life tenure. Moreover, the dignity and security of such a judiciary will result in the willingness of those in active and lucrative practice, leaders of the profession and men of large experience, to accept judicial office. Under the present system with limited terms, and salaries that are small compared with the results of private practice, there are few of the most successful lawyers who are willing in the prime of life to surrender the lucrative rewards of the profession for a temporary term of office which will leave them at the end without clients or fortune, removed from the activities of the profession, at a time in life when they are not able to cope with the intense competition prevailing, and after having acquired professional habits resulting from

judicial experience that unfit them for the rough-and-tumble of active practice. A life tenure will induce our ablest and most respected lawyers to relinquish the financial rewards which they enjoy in return for the peace, repose, and honor of such a service.

It is not contended that good judges may not be obtained for limited terms. It is true that in some states where judges are appointed by the Chief Executive or even by the Chancellor or Chief Justice, for a limited term of years, lawyers of the first rank have been appointed to the Bench; but in these cases the appointment is practically for life, for when the term of office is completed it is the unwritten law that the incumbent shall be re-appointed so long as he is able and willing to serve, so that while the original appointment may be for a limited term, in effect it is for life. Why not then recognize at once the value and merit of a life tenure? It will be suggested that thereby appointments may be made of those who may prove to be inefficient and undesirable and who cannot be readily removed. This has not proven by experience to be so frequently the case as to affect the principle involved or to require in the public interest the adoption of a system of appointment for short terms. But assuming that the objection is one which needs to be dealt with, may it not be thoroughly met by providing some method of relieving the office of an unworthy or inefficient incumbent such as prevails in England or in a number of our own States by an address by Parliament or the Legislature to the King or Governor, or by a request on the part of the Chief Executive for removal, approved by the Legislative Department?

In framing the fundamental law of the State upon this subject we should not have chief regard for the exceptional situation, but should be wholly governed by the general advantages of the plan. We may with complete safety and assurance rely upon the benefits to be derived from appointing judges for life as offsetting the possibilities of errors of judgment in the appointing power, errors which are less likely to occur under this system than any other.

As stated at the outset, the Constitutional Convention will have no higher duty than the proper solution of the questions herewith submitted. The law will be better administered under any system or

method, however defective, if the judges are of the highest character. With judges such as Marshall, Kent, Story, Shaw, Parsons, Appleton, and Peters deficiencies in procedure would be minimized. The suitor would be more secure in his rights.

If the members of the Convention wish to preserve that respect for the administration of justice which is so essential to the perpetuity of our institutions, we believe they can best do so by providing in the Constitution that judges shall be appointed for life or good behavior.*

Let us not deceive ourselves in the belief that the operations of the Primary Law or the adoption of the Short Ballot will secure protection against the wrongs that have existed. Neither of these reforms, however desirable they may be, will prevent the abuse that has heretofore existed. Political machines and leaders will, notwithstanding, continue to dictate the nominations and leave it a matter of chance whether any independent nominations made by petition will result in election. Experience also indicates that self-respecting lawyers with small means, however well qualified for the office, avoid the expense and shrink from the methods necessary to secure a nomination and election by petition.†

It has been suggested that the people may not be willing to accept the change proposed and that it may be an unwise policy to attempt to introduce it. This timid counsel deserves no serious consideration. It is the duty of our profession to maintain its position of leadership, to point the people to the right course, to adopt the right principle in the solution of these questions, and rely upon its ability to convince the people that the method proposed is the one best suited to their welfare and most likely to secure the proper administration of justice.

Among the delegates to the Convention are many distinguished members of the Bar. Upon them will devolve the responsibility of restoring our system of selecting judges to one of appointment, a system which is in principle justified and which experience has proven

*Story on Constitutions. Kent's Commentaries. Taft's Speech on Judiciary, Report of Amer. Bar Assn. 1913.
†American Judicature Society, Bulletin No. 6.

to be the best. They should honor the great trust reposed in them by a wise and fearless performance of their duty, and not shirk or evade their responsibility by a referendum of this important question to the electorate, as was done by the Convention of 1873, which, it will be remembered, made no change in the elective system, but shifted its responsibility by referring to the people the question of whether or not the existing system should be changed to one of appointment. It is not surprising that the result demonstrated that the people were not willing to propose a change which the Convention had neither the wisdom nor courage to recommend.

APPENDIX

ARTICLE XXIII

That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council, for the appointment of the said officers, of which the governor for the time being or the lieutenant-governor, or the president of the senate, (when they shall respectively administer the government) shall be president, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all the said officers; and that a majority of the said council be a quorum: AND FURTHER, That said senators shall not be eligible to the said council for two years successively.

ARTICLE XXIV

That all military officers be appointed during pleasure; that all commissioned officers, civil and military, be commissioned by the governor; and that the chancellor, the judges of the supreme court, and first judge of the county court in every county, hold their offices during good behavior, or until they shall have respectively attained the age of sixty years.

ARTICLE XXV

That the chancellor and judges of the supreme court shall not, at the same time, hold any other office, excepting that of delegate to the general congress, upon special occasions; and that the first judges of the county courts, in the several counties, shall not, at the same time, hold any other office, excepting that of senator, or delegate to the general congress. But if the chancellor, or either of the said judges be elected or appointed to any other office, excepting as is before excepted, it shall be at his option in which to serve.

ARTICLE XXVII

AND BE IT FURTHER ORDAINED that the register and clerks in chancery be appointed by the chancellor; the clerks of the supreme court, by the judges of the said court; the clerk of the court of probates, by the judge of the said court; and the register and marshal of the court of admiralty, by the judge of the admiralty. The said

marshal, registers and clerks, to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.

And all attorneys, solicitors, and counsellors at law, hereafter to be appointed, be appointed by the court, and licensed by the first judge of the court in which they shall respectively plead or practice; and be regulated by the rules and orders of the said courts.

ARTICLE XXVII

AND BE IT FURTHER ORDAINED, That where, by this constitution, the duration of any office shall not be ascertained, such office shall be construed to be held during the pleasure of the council of appointment: *Provided,* that new commissions shall be issued to judges of the county courts (other than to the first judge) and to justices of the peace, once at the least in every three years.

Revised Statutes of New York, 1836.

CONSTITUTION OF NEW YORK

1821

ARTICLE FOURTH

SEC VII. The Governor shall nominate, by message, in writing, and with the consent of the Senate, shall appoint, all Judicial Officers....

ARTICLE FIFTH

SEC. III. The chancellor and justices of the supreme court, shall hold their offices during good behavior, or until they attain the age of sixty years.

SEC. IV. The supreme court shall consist of a chief justice, and two justices, any of whom may hold the court.

SEC. V. The state shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration by the legislature, from time to time, as the public good may require; for each of which, a circuit judge shall be appointed, in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court; and in courts of oyer and terminer, and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts, as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

SEC. VI. Judges of the county courts, and recorders of cities shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

SEC. VII. Neither the chancellor, nor justices of the supreme court, nor any circuit judge, shall hold any other office, or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court, or circuit judge, during his continuance in his judicial office, shall be void.

Revised Statutes of New York, 1836.

CONSTITUTION OF NEW YORK

1846

ARTICLE VI

SEC. 2. There shall be a Court of Appeals, composed of eight judges, of whom four shall be elected by the electors of the State for eight years, and four selected from the class of Justices of the Supreme Court, having the shortest time to serve. Provision shall be made by law, for designating one of the number elected, as chief judge, and for selecting such Justices of the Supreme Court, from time to time, and for so classifying those elected, that one shall be elected every second year.

SEC. 3. There shall be a Supreme Court having general jurisdiction in law and equity

SEC. 4. The State shall be divided into eight judicial districts, of which the City of New York shall be one; the others to be bounded by county lines and to be compact and equal in population as nearly as may be. There shall be four Justices of the Supreme Court in each district, and as many more in the district composed of the City of New York, as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State in proportion to its population. They shall be classified so that one of the justices of each district shall go out of office at the end of every two years. After the expiration of their terms under such classification, the term of their office shall be eight years.

SEC. 5. The Legislature shall have the same powers to alter and regulate the jurisdiction and proceedings in law and equity, as they have heretofore possessed.

SEC. 6. Provision may be made by law for designating from time to time, one or more of the said justices, who is not a judge of the Court of Appeals, to preside at the general terms of the said court to be held in the several districts. Any three or more of the said justices, of whom one of the said justices so designated shall always be one, may hold such general terms. Any one or more of the justices may hold special terms and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

SEC. 12. The judges of the Court of Appeals shall be elected by the electors of the State, and the justices of the Supreme Court

by the electors of the several judicial districts, at such times as may be prescribed by law.

SEC. 13. In case the office of any judge of the Court of Appeals, or justice of the Supreme Court, shall become vacant, before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor, until it shall be supplied at the next general election of judges, when it shall be filled by election for the residue of the unexpired term.

SEC. 14. There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court, and perform the duties of the office of surrogate. The county court shall have such jurisdiction in cases arising in justices courts, and in special cases, as the Legislature may prescribe; but shall have no original civil jurisdiction, except in such special cases.

. . . . . In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate.

SEC. 18. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct.

CONSTITUTION OF MASSACHUSETTS

1780

PART THE FIRST

ARTICLE XXIX.

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

PART THE SECOND

CHAPTER II, SECTION I.

ARTICLE IX.

All judicial officers the solicitor general, coroners, shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment.

AMENDMENTS

ARTICLE XIX.

The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.

Revised Laws of Massachusetts, 1902.

CONSTITUTION OF NEW HAMPSHIRE

1784

PART II

Executive Power.

ART. 45. All judicial officers, the attorney general, coroners, and all officers of the navy and general and field officers of the militia shall be nominated and appointed by the governor and council, and every such nomination shall be made at least three days prior to such appointment; and no appointment shall take place unless a majority of the council agree thereto.

Judiciary Power.

ART. 72. . . . All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting those concerning whom there is a different provision made in this constitution: *provided, nevertheless,* the governor, with consent of counsel, may remove them upon the address of both houses of the legislature.

ART. 77. No person shall hold the office of judge of any court, or judge of probate, or sheriff of any county, after he has attained the age of seventy years.

Public Statutes of New Hampshire, 1901.

CONSTITUTION OF CONNECTICUT

1818

ARTICLE FIFTH

SECT. 1. The judicial power of the State shall be vested in a Supreme Court of Errors, a Superiour Court, and such inferiour courts as the General Assembly shall, from time to time, ordain and establish: the powers and jurisdiction of which courts shall be defined by law.

SECT. 3. . . . The Judges of the Supreme Court, and of the Superiour Court, shall hold their offices during good behaviour; but may be removed by impeachment; and the Governor shall also remove them on the address of two-thirds of the members of each house of the General Assembly; all other judges and justices of the peace shall be appointed annually. No judge or justice of the peace shall be capable of holding his office after he shall arrive at the age of seventy years.

AMENDMENTS

ARTICLE TWENTY-SIX

Adopted October, 1880.

The judges of the Supreme Court of Errors and of the Superior Court shall, upon nomination of the Governor, be appointed by the General Assembly in such manner as shall by law be prescribed.

General Statutes of Connecticut, 1902.

CONSTITUTION OF MAINE

1819

ARTICLE V. PART FIRST

Executive Powers

SEC. 1. The supreme executive power of this State shall be vested in a Governor.

SEC. 8. He shall nominate, and, with the advice and consent of the council, appoint all judicial officers, coroners and notaries public . . . . . .

ARTICLE VI

Judicial Power

SEC. 1. The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

SEC. 4. All judicial officers *now in office or who may be hereafter appointed* shall, *from and after the first day of March in the year eighteen hundred and forty,* hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the Executive), and no longer unless re-appointed thereto.

SEC. 7. Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in at the annual election, on the second Monday of September, and shall hold their offices for four years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid, at the September election next after their occurrence; and in the meantime, the Governor, with the advice and consent of the Council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January thereafter.

SEC. 8. Judges of municipal and police courts shall be appointed by the executive power, in the same manner as other judicial officers, and shall hold their offices for the term of four years . . .

Revised Statutes of Maine, 1903.

CONSTITUTION OF DELAWARE.

1831

ARTICLE III

SEC. 1. The supreme executive powers of the State shall be vested in a Governor.

SEC. 8. He shall appoint all officers whose offices are established by this Constitution, or shall be established by law, and whose appointments are not herein otherwise provided for.

Laws of Delaware, 1893.

CONSTITUTION OF THE STATE OF NEW JERSEY

1844

ARTICLE VII

SECTION II.

1. Justices, chancellor and judges; term and compensation.—Justices of the supreme court, chancellor, and judges of the court of errors and appeals, shall be nominated by the governor and appointed by him, with the advice and consent of the senate.

The justices of the supreme court and chancellor shall hold their offices for the term of seven years; shall, at stated times, receive for their services a compensation, which shall not be diminished during the term of their appointments; and they shall hold no other office under the government of this state or of the United States.

2. Judges of pleas; term.—Judges of the court of common pleas shall be appointed by the senate and general assembly in joint meeting.

They shall hold their offices for five years; but when appointed to fill vacancies, they shall hold for the unexpired term only.

Compiled Statutes of New Jersey, 1709—1910.

MISH 20543

END OF
TITLE